

EXHIBIT

A

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

MADISEN ULRICH, an individual,

Plaintiff,

v.

**319 BRAGG STUDENT HOUSING
AUBURN AL LLC, et al.,**

Defendants.

Civil Case No.: 3:20-cv-1018-RAH-SRW

**PLAINTIFF’S STATEMENT IN RESPONSE TO CSX TRANSPORTATION, INC.’S
STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiff Madisen Ulrich, by and through her counsel, submits the following statement in response to CSX Transportation, Inc.’s (“CSXT”) Statement of Undisputed Material Facts in connection with CSXT’s Motion for Summary Judgment in this cause:

1. This action arises from an accident that occurred on October 4, 2018 at the intersection of North Donahue Drive and CSXT’s railroad tracks in Auburn, Alabama. Am. Compl. ¶ 5, 21.

Response: Undisputed.

2. On said date, Plaintiff was a student at Auburn University and a resident of 319 Bragg, which is a private student housing complex. *Id.* ¶ 9.

Response: Undisputed.

3. On the afternoon of October 4, while Plaintiff was walking to 319 Bragg from her classes, she stepped into the path of a CSXT freight train and was struck. *Id.* ¶ 68.

Response: Disputed, but only with a qualification. Madisen did not actually

reach the tracks themselves. She was apparently struck by the edge of the snowplow or cowcatcher which overhangs the tracks themselves by some three feet, approximately. Even though she still suffered devastating injuries, this slight difference is the difference between life and death.

4. She was talking on her cell phone at the time of the accident. *Id.*

Response: Undisputed.

5. The lead locomotive of the CSXT freight train that struck Plaintiff was equipped with an Event Data Recorder (“EDR”) and a Locomotive Digital Video Recorder (“LDVR”). Affidavit of Michel Ray, ¶ 3, attached hereto as *Exhibit. 1*.

Response: Undisputed.

6. An EDR is an electronic computer device required on all locomotives by the Federal Railroad Administration (“FRA”).

Response: Undisputed.

7. An EDR records information from the locomotive such as speed, distance traveled, horn and bell, among other things.

Response: Undisputed as to the description of the EDR. This does not mean that the Plaintiff unequivocally accepts the information provided by CSXT as true and accurate. Plaintiff has not yet had the opportunity to test this data. This point is irrelevant for the purposes of this motion, however.

8. An LDVR records video images from the front of the locomotive. *Id.* ¶ 2.

Response: Undisputed as to the description. The Plaintiff has not yet been able to analyze the data or the device to determine if there is any ability to edit or alter this data. This does not mean that the Plaintiff unequivocally accepts the

13. The LDVR footage from CSX locomotive 5280 shows a female pedestrian (the Plaintiff) walking toward the railroad tracks near the North Donahue Drive grade crossing as the train approaches it.

Response: Undisputed.

14. She walks to the right side of the activated mast-mounted flashing lights and lowered gates that warn pedestrians and motorists of the approach of a train and physically block the crossing.

Response: Disputed. Though only a matter of clarification, CSXT's affidavit seems to imply that Madisen was walking directly towards the cross bucks and flashing lights and then simply shifted her direction slightly right.

However, one of the eyewitnesses has provided a declaration stating that Madisen was walking away from the cross bucks towards the Bragg Walking Gate at the back of Bragg along the path created by CSXT's attempt to obstruct access to its right of way (*Plaintiff's Exhibit 23*, Alabama Uniform Incident/Offense Report by the Auburn Police Division - Records). The witness' statement and the train's video place the point of impact as right between the tracks and pile of concrete placed in the right of way by CSXT that is wrapped in orange warning plastic.

15. She continues walking toward the railroad tracks into the path of the train without stopping or looking in the direction of the approaching train before attempting to cross the tracks.
Id. ¶ 7.

Response: Undisputed.

16. A true and accurate copy of the LDVR, along the software that enables viewing the